

### REMARKS

This Amendment responds to the Office Action mailed October 8, 2010.

#### Status of the Claims

Claims 79 and 83 have been amended without the introduction of new matter.

Claims 79-83 are currently pending.

#### Comment Regarding IDS

The Office has requested that of the references submitted in prior Information Disclosure Submissions, certain references be identified as being of particular relevance. Applicant notes that the references that were submitted in an IDS as a result of being cited in an International Search Report are considered to be particularly relevant for the reason that these references were cited by a competent searching authority. Applicant notes that some of the references were provided by prior counsel who is no longer part of the circle of those having a duty of disclosure, yet, on information and belief, the references owe their origin to prosecution of other cases assigned to the present assignee and a determination was made by them that disclosure is appropriate.

#### Rejections Under 35 U.S.C. § 103

Claims 79-83 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,716,367 to Koike et al. ("Koike") in view of U.S. Patent No. 6,071,292 to Makower et al. ("Makower").

Koike discloses a catheter device for suturing closed an opening between the atrium of a heart. Koike discloses a piercing needle 28 that is deployed through the

**distal tip** of the second sheath 1, as shown in Fig. 10. The piercing needle 28 at the distal tip is used to pierce the interatrial septum such that the distal end of the catheter passes from one atrium to the other. It is only by passing the distal end of the catheter through the wall dividing these two chambers of the heart using the distal piercing needle 28 that the suture can be deployed. In contrast, amended independent claim 79 recites “a distal catheter portion adapted to be received **into a chamber of a heart**” and an anchor delivery structure which is “movable relative to the distal catheter portion in the chamber of the heart ... to a second position wherein said anchor is moved through said opening to engage the heart tissue.” The presently claimed invention offers significant advantages over Koike because Koike requires pushing its entire distal catheter section through a dividing wall in the heart with a distal piercing needle. Such an arrangement has the potential to cause injury as the entire distal section of the catheter is passed through the heart wall with the piercing needle projecting out of the distal tip opening of the catheter.

Accordingly, Koike teaches using the distal needle tip protruding out of a distal tip opening of a catheter to penetrate and pass through heart wall tissue in order to pass a suture through the heart wall. Similarly, Makower teaches deploying a needle 204 through a distal tip opening of catheter 202 in order to deploy engagement members 209. Both Koike and Makower teach using a needle protruding through a distal tip opening of catheter in order to deploy into tissue. Neither Koike nor Makower, either alone or in combination, fairly teach or suggest an anchor delivery structure which is “movable relative to the distal catheter portion in the chamber of the heart ... to a second position wherein said anchor is moved through said opening to engage the heart tissue,” as recited

in claim 79. Accordingly, Applicant submits that independent claim 79 is allowable over Koike in view of Makower for at least this reason.

Claims 80-83 each depend from independent claim 79 and Applicant submits that claims 80-83 are allowable at least due to their dependence from an allowable independent claim and in view of their respective further recitations.

In addition, with respect to claim 80, neither Koike nor Makower teach deploying a catheter into the gutter region of the mitral valve. Accordingly, Applicant respectfully submits that neither Koike nor Makower either alone or in combination teach or suggest a catheter convertible to second condition wherein the shape of said distal catheter portion conforms to the contour of the gutter of the mitral valve. Applicant requests withdrawal of the rejection of claim 80 for at least this additional reason.

With respect to claim 83, the Office contends that the hooks 42 of Koike are locking elements. Applicant contends that the hooks 42 cannot be fairly considered to be locking elements and amended claim 83 further recites that the “locking element is adapted to remain coupled to said tensile member and separated from the anchor delivery catheter.” In contrast, Koike discloses that the hooks 42 are fixedly connected to the catheter 3 and do not remain in the body. Makower fails to cure the deficiency. Accordingly, Applicant requests withdrawal of the rejection of claim 83 for at least this additional reason.

**CONCLUSION**

It is believed that no further fees are due or that all fees have been paid; however, if the Patent Office believes that fees due, the Commissioner is authorized to charge the Undersigned's Deposit Account No. 50-4570.

Dated: April 8, 2011

Respectfully submitted:

By: /david leason/.  
David Leason  
Registration No.: 36,195  
LEASON ELLIS LLP  
81 Main Street, Suite 503  
White Plains, NY 10601  
(914) 288-0022  
(914) 288-0023 (Fax)  
Attorneys/Agents for Applicant